82-2042
No. ___

In the
Supreme Court of the United States

October Term, 1982

Westinghouse Electric Corporation,
Petitioners

V.

Christine Vaughn and Marion Gee,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

JAMES W. MOORE*
WALTER A. PAULSON, II
2000 First National Building
Little Rock, Arkansas 72201
(501) 376-2011

STUART I. SALTMAN
Westinghouse Electric Corporation
Westinghouse Building
Gateway Center
Pittsburgh, Pennsylvania 15222

Attorneys for Petitioners
**Counsel of Record*

I.
QUESTIONS PRESENTED

(1) WHEN A GENERALIZED PRIMA FACIE CASE HAS BEEN REBUTTED BY DEFENDANT'S PROOF OF A SPECIFIC NONDISCRIMINATORY REASON FOR THE EMPLOYMENT ACTION, IS THE PLAINTIFF REQUIRED TO PRESENT EVIDENCE CONCERNING THE PARTICULAR CONDUCT IN ISSUE IN ORDER TO ESTABLISH PRETEXT?

(2) WHETHER THE DISTRICT COURT'S APPLICATION OF GENERALIZED EVIDENCE FROM THE PRIMA FACIE CASE TO MEET PLAINTIFF'S PRETEXT BURDEN EFFECTIVELY FORECLOSED DEFENDANT'S OPPORTUNITY TO REBUT THE INFERENCE DRAWN FROM THE PRIMA FACIE CASE, AND WAS THEREFORE CLEARLY ERRONEOUS OR INCONSISTENT WITH PREVIOUSLY ENUNCIATED LEGAL STANDARDS?

(3) WHEN DISCRIMINATORY ANIMUS HAS BEEN SHOWN TO HAVE BEEN A FACTOR IN THE DECISION, MAY THE DEFENDANT OVERCOME A FINDING OF DISCRIMINATION BY ESTABLISHING THAT THE CHALLENGED EMPLOYMENT DECISION WOULD HAVE OCCURRED IN ANY EVENT, EVEN ABSENT THE DISCRIMINATION?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Petitioner Westinghouse Electric Corporation [1] respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered in this proceeding on March 11, 1983.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit appears in Appendix A hereto, and is reported at 702 F.2d 137 (8th Cir. 1983). The opinion of the United States District Court for the Eastern District of

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[1] Wholly and partially owned subsidiaries of Westinghouse Electric Corporation are listed at Appendix D.

Arkansas, Richard Sheppard Arnold, Circuit Judge, sitting by designation, appears in Appendix A, and is reported at 523 F.Supp. 368 (E.D. Ark. 1981).

JURISDICTION

The judgment of the Court of Appeals for the Eighth Circuit was entered on March 11, 1983. This petition was filed within ninety days of that date. The Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

United States Code, Title 42:

§2000e-2. *Unlawful employment practices—Employer practices*

(a) It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin . . . .

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, and under 28 U.S.C. §1331. The dispute arose when the Plaintiff below, Ms. Christine Vaughn, a black female employee, filed suit alleging among other things that she was disqualified in 1971 as a sealex machine operator by defendant Westinghouse Electric Corporation because of her race. At the conclusion of the trial to the court, the district court found against two other plaintiffs on their claims and found against Vaughn on all other claims except the single claim regarding her disqualification as a sealex machine operator. Ms. Vaughn, a black, was hired by Westinghouse on July 13, 1970, as a sealex machine operator, labor grade 4, at $2.20 per hour. She was transferred on November 16, 1970 to the second shift, and on January 25, 1971, to the third shift due to a reduction in force. She continued in that position on the third shift under the supervision of Mr. C.T. Turnage until April 19, 1971, when she was disqualified as a sealex operator by Mr. Turnage and placed on an open labor grade 1 job, resulting in a loss of pay of $ .24 per hour. She has remained since that time in the employ of Westinghouse and at the time of trial had attained the rate of labor grade 3 at $5.40 per hour.

At the time Ms. Vaughn was transferred from sealex operator on the second shift, her shift supervisor, Mr. Brazil, evaluated her quantity and quality of production as poor and recommended that she not be rehired in that position. Two days before that evaluation, an entry was made on a personnel form that Vaughn had had previous satisfactory experience on the second shift.

On the third shift, under Mr. Turnage's supervision, Ms. Vaughn was verbally warned on five separate occasions that her production was unacceptable due to an inadequate number of lamps sealed and too many burnt wires. These

verbal warnings were noted in writing by Mr. Turnage, and his notes were made a part of the trial record. On April 19, 1971, Ms. Vaughn was disqualified from her job as sealex operator. The disqualification form noted that she could not hold this job in the future and stated that although she got along well with others and had good attendance, her work quality and quantity were poor, the supervisor was unable to motivate her, and she showed no interest in the job as sealex machine operator.

The district court originally held that the plaintiffs had established a *prima facie* case of racial discrimination under the rationale of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Vaughn v. Westinghouse Electric Corp.*, 471 F.Supp. 281, 286 (E.D. Ark. 1979). That finding was based primarily upon a finding of low black representation in non-production jobs, an apparent but unexplained adverse impact upon black applicants in the Defendant's hiring decisions, and the proof that Ms. Vaughn had held the position, was disqualified and a white employee replaced her. *Ibid.* The district court then held, with respect only to Ms. Vaughn's disqualification, that Westinghouse had failed to demonstrate proof sufficient to overcome plaintiffs' *prima facie* case. *Vaughn, supra*, at 289-90.

From that judgment, Westinghouse appealed, alleging that the district court had misapplied the burdens of proof. The Court of Appeals for the Eighth Circuit affirmed in a two-to-one majority decision. 620 F.2d 655 (8th Cir. 1980).

On March 9, 1981, this Court granted Defendant's petition for certiorari, summarily vacated the judgment and remanded the case to the Court of Appeals for further consideration in light of *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). The Court of Appeals remanded with the same directions to the trial

court. On remand, the trial court [2] held that, even though it was in error in placing too great a burden on the Defendant, after reviewing the record as a whole, its original finding of discrimination against Vaughn should be reaffirmed. Westinghouse again appealed, challenging the trial court's finding that the reasons articulated for the disqualification were pretextual. In another two-to-one majority decision the Court of Appeals affirmed, holding that the district court's finding of pretext was not clearly erroneous.

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2 The trial judge, Honorable Richard S. Arnold, had in the interim between the original trial and the remand been elevated to the Court of Appeals for the Eighth Circuit. He heard the case on remand as Circuit Judge sitting by designation.

REASONS FOR GRANTING THE WRIT

The Decision Below Has Resolved An Important Question of Federal Law In a Manner Inimical To This Court's Established Tests for Title VII Disparate Treatment Cases.

In straightforward terms, the result reached by the Court of Appeals in the instant case is this: Whenever an employer has less-than-perfect statistics concerning black representation in its workforce, the discipline of a black employee, however well-deserved, is accompanied by a presumption that the discipline was racially motivated. Further, the presumption cannot be overcome unless the employer can prove by a preponderance of the evidence that race played absolutely no part in his decision. It matters not that the employee offers no evidence of discriminatory motive or any evidence at all relating to the challenged employment decision. Moreover, it does not matter that the employee would have suffered the same result even in the absence of discrimination.

In the circumstances described above, the court has not found that plaintiff has established a causal link between the unexplained hiring and promotion statistics and the disqualification at issue; rather, the court has simply ruled that defendant has failed to show that there was no causal link. That is not and never has been the law—not under Title VII, and not under any related legal theory. Such a rule imposes an irrebuttable presumption upon the defendant, as well as the burden to prove a negative, or the absence of a fact. Because Title VII creates no such statutory presumption, to impose this burden judicially is clearly error.

In *United States Postal Service Board of Governors v. Aikens*, 51 U.S.L.W. 4355 (April 4, 1983), this Court discussed the meaning of "footnote ten" in *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248,

255 n. 10 (1981). After the plaintiff has established a *prima facie* case and the defendant has introduced admissible evidence setting forth the reasons for plaintiff's rejection, the presumption "drops from the case," *Id.* at 255, n.10, and "the factual inquiry proceeds to a new level of specificity." *Id.*, at 255. The plaintiff then has the opportunity to show that the proffered reason was not the true reason, but rather a pretext. The *Aikens* court quoted the following language from *Burdine, supra*:

> The plaintiff retains the burden of persuasion. [H]e may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. 450 U.S., at 256.

Id. at 4356. "In short, the district court must decide which party's explanation of the employer's motivation it believes . . . . But none of this means that trial courts or reviewing courts should treat discrimination differently from other ultimate questions of fact." *Id.*

In the instant case, the trial court did not find that the employer's proffered explanation was unworthy of credence. In fact, the court did "not doubt that the burnt wires documented by defendant in fact existed, or that production problems were a genuine concern." 523 F.Supp. at 371.

Further, the court noted that after reading and re-reading the disqualifying supervisor's testimony, "[t]here is no reason to disbelieve any of it." *Id.* n. 5. The court instead held, couching his holding in language similar to *Burdine's* first theory of pretext, that "on balance, the Court is persuaded that plaintiff's race was more likely than not *one* of the factors that contributed substantially to defendant's decision." *Id.* at 371 (emphasis added). In short, even though "there was virtually no direct evidence of unlawful

motivation on the part of Mr. Turnage," *Id.* at 370, and even though the defendant's documented reasons for its conduct were obvious and unrebutted, the court was somehow persuaded that unlawful reasons more likely motivated the employer. Such a result applies the *Burdine* decision more as an afterthought than as a guideline for allocating the burdens in a Title VII case. It is asserted that, in light of the entire development of disparate treatment analysis, this casual easing of plaintiff's burden of persuasion effectively insures that the defendant rather than the plaintiff shoulders the burden of persuasion once the *prima facie* presumption arises. This creates an irrebuttable presumption that is antithetical to every decision of this Court on the subject since 1973.

In the seminal decision on disparate treatment, *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973), this Court set forth an order and allocation of proof which has stood relatively unchanged since that time. In its discussion of the third stage of proof, that coming after defendant has articulated a non-discriminatory reason for its actions, the Court held:

> On remand, respondent must, as the Court of Appeals recognized, be afforded a fair opportunity to show that petitioner's stated reason for respondent's rejection was in fact pretext. Especially relevant to such a showing would be evidence that white employees involved in acts against petitioner of comparable seriousness to the "stall-in" were nevertheless retained or rehired. . . . Other evidence that may be relevant to any showing of pretext includes facts as to the petitioner's treatment of respondent during his prior term of employment; petitioner's reaction, if any, to respondent's legitimate civil rights activities; and petitioner's general policy and practice with respect to minority employment.

Id. at 804-05. It is significant that, of the factors listed, evidence concerning similarly situated white employees

was considered "*especially* relevant," while, of the factors which "*may* be relevant," only the last one listed, dealing with generalized statistical evidence, was listed with a caveat. That caveat, found in footnote 19, reads in pertinent part as follows:

> The District Court may, for example, determine, after reasonable discovery that "the [racial] composition of defendant's labor force is itself reflective of restrictive or exclusionary practices." . . . We caution that such general determinations, while helpful, may not be in and of themselves controlling as to an individualized hiring decision, particularly in the presence of an otherwise justifiable reason for refusing to rehire.

In *Furnco Construction Corporation v. Waters*, 438 U.S. 567, 578 (1978), this Court was primarily addressing the second stage burden, and merely repeated and reaffirmed the *McDonnell Douglas* test for the third-stage burden. The Court stated, however, that, while not *conclusive*, generalized statistics of the employer's employment practices could be considered in determining his motivation in particular cases. There, of course, it was the employer's balanced statistics which were urged as conclusive by the petitioner. But the reasoning applies equally to both parties —statistics, good or bad, cannot establish a conclusive and irrebuttable presumption in favor of either party in a treatment case. Like any other evidence, they may be rebutted.

Against this backdrop, the Court was presented with the *Burdine* case. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981). In *Burdine*, the Court was again faced with an issue concerning the second-stage, or defendant's burden, but went on to discuss the third-stage burden as set forth above. The clear implication of this series of cases is that the burden of persuasion never shifts; that, because of that, the defendant never has the burden of proving an absence of discrimination; that once a non-discriminatory reason is articulated, the presumption

disappears, and the court must focus more closely on that evidence related to the challenged decision—the more directly-related the better—to determine if the reason proffered is credible; and that, while the generalized statistics of the *prima facie* case are relevant to pretext, they are only remotely and not conclusively so. They cannot be used to shift the burden of *persuasion* by creating a situation in which it is impossible for a defendant to rebut the *prima facie* case because his evidence does not "preponderate enough" to overcome the statistics. Doing so commits the same error as the First Circuit in *Board of Trustees of Keene State College v. Sweeney*, 439 U.S. 24 (1978), and the Fifth Circuit in *Burdine*, by glossing onto the employer's burden an additional requirement not intended or allowed by the established tests set out by this Court. In practical effect, no defendant can defend even the most straightforward individual treatment case without also defending its practices across-the-board, regardless of whether those practices bear any relation to the challenged conduct. As stated by Judge Floyd R. Gibson in his dissent in the first Eighth Circuit opinion, *Vaughn*, *supra*, 620 F.2d at 662,

> The Civil Rights Act of 1964 is not thought to have been intended to preserve sinecures for people, regardless of their race, who do not want to perform reasonably satisfactory work. Vaughn's productivity record was the worst of any of the operators. The Act here is being utilized as a shield to protect and reward substandard performance.

The Decision Below Conflicts With The Decisions Of Other Courts Of Appeals As To The Employee's Burden Of Proof To Show Pretext After The Prima Facie Case Has Been Rebutted.

It requires no long discussion to establish that, even after *Burdine* and *Aikens*, there remains some confusion among the Circuits with respect to the third-stage burden in Title VII disparate treatment cases. The problem, quite

simply, is that those Circuits which have traditionally shifted the burden of persuasion to the defendant are now using the "more-likely-than-not" prong of the pretext theories set forth in *Burdine* to find liability. They do so in those cases where, although there is no evidentiary basis for discrediting defendant's articulated reasons, the court is not satisfied that defendant's actions were devoid of discriminatory animus. A few examples of cases on this issue in the various circuits should establish the conflict:

In *Grano v. Department of Development*, 699 F.2d 836 (6th Cir. 1983), the Court of Appeals for the Sixth Circuit held that, at the third or pretext stage, a court should view an employer's articulated reason with "particularly close scrutiny" when the reason is based upon a subjective evaluation by a supervisor of another race than the plaintiff. Subjectiveness, however, is not unlawful *per se*, and the plaintiff may not establish pretext based upon subjectiveness unless the subjective criteria are affirmatively shown to have been used to disguise discriminatory action. *Id.* In *Vaughn*, to the contrary, a perceived lack of objectivity was enough to shift the burden to the defendant to overcome a presumption based upon unrelated statistics.

In *Mohammed v. Callaway*, 698 F.2d 395 (10th Cir. 1983), the Court of Appeals for the Tenth Circuit considered carefully the particular circumstances surrounding the allegedly discriminatory employment decision in order to find pretext. While the Court did consider statistical evidence, it was careful to draw an inference only from the evidence directly relevant to that decision, the admitted failure to select minorities for supervisory positions such as that sought by the plaintiff.

The Tenth Circuit's view of *Burdine* is more clearly set forth in *Montgomery v. Yellow Freight System*, 671 F.2d 412 (10th Cir. 1982), in which the plaintiff asserted that the burden was on the defendant to prove that he would have been fired regardless of his race. The Court, relying on

Burdine, held that the employee had the ultimate burden, an affirmative one, to show pretext and the defendant was not required to prove the absence of discrimination. The plaintiff also urged that the defendant had failed to show that non-black employees had been treated the same as plaintiff, but the Court held that under *Burdine*, it was "the *plaintiff's* task to demonstrate that similarly situated employees were not treated equally." *Id.* at 413, quoting *Burdine* at 248. Had the Eighth Circuit applied that standard in the instant case, under the district court's own findings, the plaintiff could not have prevailed, because "no proof was offered to the effect that a white person with a work record comparable to Ms. Vaughn's was kept on the job." *Vaughn, supra*, 523 F.Supp. at 370.

In *Perryman v. Johnson Products Co.*, 698 F.2d 1138 (11th Cir. 1983), the Eleventh Circuit carefully set forth its view of the allocation of burdens after *Burdine*. In its view, the plaintiff may attack defendant's articulated reasons under either of the theories described in *Burdine*, and, if successful, create a new presumption of discriminatory intent that may only be rebutted by a showing by the employer that the adverse action would have been taken in the absence of discriminatory intent. *Id.* at 1142, citing *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). Had the Eighth Circuit applied that test, again defendant would have prevailed, since the district court expressly found that the plaintiff's "burnt wires . . . in fact existed, [and] that production problems were a genuine concern. It seems likely, in fact, that plaintiff's job performance did leave something to be desired, and that defendant was in part legitimately motivated in disqualifying her." *Vaughn, supra*, 523 F. Supp at 371.

"The question in the case, however, is whether race played *any* substantial part in defendant's decision-making." *Vaughn, supra*, 523 F. Supp. at 371. (emphasis the Court's). In affirming, the Court of Appeals interpreted that holding to mean "motivated in substantial

part by her race." *Vaughn, supra*, 702 F.2d at 139. While this language somewhat changes the import of the district court's holding, it nevertheless approves a legal theory of liability contrary to that announced by the Eleventh Circuit.

The Court of Appeals of the District of Columbia would apparently apply a still different burden. *Toney v. Block*, No. 81-2235 (D.C. Cir. April 29, 1983). There, in a case involving a federal employee who had exhausted formal administrative procedures, the plaintiff sought to impose upon the employer the burden to establish by clear and convincing evidence that an unlawful factor was not the determinative one. The Court agreed that this burden would be appropriate in the circumstance where "the plaintiff had established [before an administrative tribunal] that unlawful discrimination had been applied against him *in the particular employment decision for which retroactive relief was sought.*" *Id.* (emphasis the Court's). This was fair in that circumstance because the employee, having already shown discrimination, should not be required "to establish in addition the difficult hypothetical proposition that, had there been no discrimination, the employment decision would have been made in his favor."

> "It is fundamentally different, however, to assert that where the existence of unlawful discrimination has been established only within the employment unit at large (or perhaps against the employee in regard to some other aspect of his employment) and has *not* been specifically attributed to the employment decision of which he complains, we will *both* find discrimination to have been a factor *and* find that factor to have been determinative unless the employer makes the extraordinary and difficult Day v. Matthews showing. The difference between Day and the present case is the difference between making the employer demonstrate (by clear and convincing evidence) that a cause established through normal processes of proof was not an efficacious one, and making him demonstrate that the cause itself did not exist."

Id. The Court relied upon the language in *Burdine*, to hold that demonstration of discrimination at large constitutes, for purposes of individual relief, no more than the prima facie case that shifts the burden to the defendant to give a justification. Once the defendant produces a reason, the plaintiff may rely upon the generalized proof to prove pretext, but it is plaintiff's burden to prove it, not defendant's burden to prove the opposite. *Id.*

Had the Eighth Circuit utilized even the more difficult standard urged by the plaintiff in *Toney*, defendant nevertheless would have had some opportunity to show that there was no causal link between the "at-large" discrimination and Vaughn's disqualification. Instead, however, the defendant met only the "revolving door" of plaintiff's initial proof, again and again, requiring the defendant to disprove a negative inference that should not have been drawn in the first place.

The final notable example of the third-stage allocation of burdens is the Fifth Circuit's subsequent treatment of the *Burdine* case itself. The Court there held that the articulated reason was clear in the record, and no more was required. *Burdine v. Texas Department of Community Affairs*, 647 F.2d 513 (5th Cir. 1981). The Court's failure to consider pretext in detail must be viewed as a tacit holding that the nature of the evidence produced by the defendant could not be overcome by extrapolation from the *prima facie* evidence, the extent of which this Court had noted in its own decision at footnote 11. If the evidence catalogued by this Court in *Burdine*—primarily failure to utilize objective criteria—was insufficient there, it was in *Vaughn* as well.

A detailed review would establish that the inconsistent application of the third-stage burden in disparate treatment cases is recurrent and obvious at the circuit and district court levels throughout the federal judicial districts. What seemed clear is no longer clear. This Court must now clearly

articulate the proper method for testing pretext in disparate treatment cases, and no case better than this one presents the question so precisely for this Court's review. Because the Court has already passed on the merits of this case with respect to the first two stages of proof, the facts are now clearly developed for a decision which could substantially reduce or eliminate the confusion now clouding the pretext stage. Further, this case clearly presents the issue of whether the *Mt. Healthy* test applies in Title VII disparate treatment cases.

The Decision Below Conflicts With Other Decisions On The Same Issue Within The Eighth Circuit.

A party seeking to ascertain the appropriate burdens at stage three, if he were not confused enough by the law in the various circuits, would be hopelessly lost in using the Eighth Circuit as a reference. There is simply no discernable pattern in this Circuit, save its apparent disregard for *Burdine*.[3] Before *Burdine* in *Middleton v. Remington Arms Co.*, 594 F.2d 1210 (8th Cir. 1979), the Eighth Circuit considered it conclusive on the issue of pretext that the plaintiff was able to produce " 'not one scintilla of evidence' that *he* was treated any differently than other employees." *Id.* at 1213. Yet in *Vaughn*, both the trial and appeals courts candidly found that there was no such evidence presented by the plaintiff, but found the defendant guilty of unlawful discrimination nonetheless.

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It is notable that, in *Vaughn*, remanded by this Court for consideration in light of *Burdine*, only casual reference was made to that case at all. The District Court, while demanding additional briefs expressly discussing *Burdine*, wasted no more than one sentence and a footnote on consideration of that decision. Neither court considered the effect of this Court's extended discussion of the pretext burdens in *Burdine*, even though both were under a mandate to do so.

In *Johnson v. Bunny Bread Company*, 646 F.2d 1250, 1256 (8th Cir. 1981), the Eighth Circuit considered the appeal of two employees who unsuccessfully alleged discriminatory treatment as to working conditions and discharges. The Court, reflecting a proper distrust for marginally related evidence, "scrutinized closely" the generalized statistics offered to prove pretextual motive, and found that in light of the unrebutted evidence of legitimate reasons for the actions, the statistics were left "with little, if any, probative value." *Id.* at 1255. "Without additional evidence . . . the connection between [these statistics] and [Johnson's] discharge is too attenuated to compel a finding of [discriminatory] motive." *Id., citing Person v. J.S. Alberici Constr. Co.*, 640 F.2d 916, 919 (8th Cir. 1981). The Court then searched the record for "additional evidence" that similarly situated white employees had been treated differently than blacks. Finding none, the Court held that the plaintiffs had failed to meet their third-stage burden.

In *Locke v. Kansas City Power and Light Co.*, 660 F.2d 359 (8th Cir. 1981), the Court again performed an analysis similar to that employed in *Person*, *Johnson* and *Middleton*. In finding pretext, the Court relied upon specific fact-findings related to the employment action in question and the credibility of defendant's articulated reason. There was no such evidence in *Vaughn*. The pattern that had appeared to emerge in pretext cases thus evaporated.

The best example, however, of the split in this Circuit is illustrated by *Vaughn* and the two other cases argued to that same panel on the same day, and decided within two months of each other. The *Vaughn* decision, of course, is before this Court, and its reasoning is set forth in Appendix A hereto. The other cases argued along with *Vaughn* are *Robinson v. Arkansas State Highway Commission*, 698 F.2d 957 (8th Cir. 1983), and *Danzl v. North St. Paul-Maplewood-Oakdale Independent School District No. 622*, No. 82-1688 (8th Cir. May 4, 1983). In *Robinson*, the Court of Appeals

relied upon *Burdine* and *Johnson*, *supra*, to find that the plaintiff had failed to establish pretext. In so doing, the Court considered carefully the facts surrounding the challenged employment decision. Although the plaintiff asserted strongly that her generalized evidence demonstrated pretext, it is notable that the Court dismissed this argument out-of-hand because she failed to "explain how such evidence demonstrate[d] that her failure to be transferred was racially motivated . . . ." *Id.* at 958, citing *Johnson*, *supra*, at 1254-55. In other words, there was no causal link between that evidence and the challenged employment decision.

In *Danzl*, *supra*, the Court reversed the trial court's finding of pretext (on rehearing after remand in light of *Burdine*), relying heavily on the *McDonnell-Burdine* holdings that "[a]t all times the ultimate burden of persuasion that the defendant committed intentional discrimination remains with the plaintiff." *Id.* slip op. at 5. The Court held that, in order to discharge that burden, the plaintiff "need not prove that her sex was the sole reason for the challenged employment decision, but need only prove that sex was a factor in the decision." *Id.* But the key basis for the reversal in *Danzl* was the fact that the defendant's articulated reason for the difference in treatment was never contradicted. "Because the school district provided a reasonable factual explanation that was uncontradicted, we think the district court committed clear error by finding that the school district's proffered reason was pretextual." The same must be said of the defendant's reasons in *Vaughn*, but the result there was strikingly different. Importantly, the defendant in *Danzl* had a history of underrepresentation of women in administrative positions and had obligated itself under a national agreement between the United States Department of Health, Education and Welfare and the Women's Equity Action League to "make a conscious effort to select female administrators." Despite that generalized proof, the Court

"thoroughly searched the record and . . . found nothing that supports the district court's finding of intentional discrimination." *Id.* at 11.

Danzl and *Robinson* cannot be factually distinguished from *Vaughn*. If anything, the legitimate business reasons articulated for the challenged employment decision in *Vaughn* were clearer and stronger than in *Robinson* and *Danzl*. There was not even diminishing, much less contradictory proof offered to rebut those reasons. Such a disparity in result, by the same panel of the same Court, makes it impossible for courts or practitioners to determine the requirements of the pretext stage in a disparate treatment case.

The Decision Below, Besides Its Legal Faults, Is Clearly Erroneous On The Facts And Is Unsupported By Any Relevant Evidence.

While the foregoing analysis clearly establishes a basis for the granting of this petition, this Court may also grant certiorari and hear a case under its supervisory powers, to right a glaring wrong. Petitioner is aware of the Court's recent pronouncements on the application of the "clearly erroneous" doctrine in Title VII cases, *Pullman-Standard v. Swint*, 102 S.Ct. 1781 (1982), but justice demands that cases should be decided on the evidence, and not based upon the subjective feelings of the trier-of-fact. The Court of Appeals in *Vaughn* determined that "[t]his is a close case and it may well be that the panel, if sitting as the trial judge, might have found that Westinghouse's proffered reason for plaintiff's disqualification was not pretextual." *Vaughn, supra*. 702 F.2d at 139. The Court nevertheless felt constrained by the standard of review set forth in Rule 52(a), Fed. R. Civ. P., to affirm. While the Court expressed a hesitance to disturb the findings and decision of a trial court, it had no hesitation about affirming a decision which disapproved an employer's business decision simply because it did not satisfy the trial court's belief that there

was a better way to arrive at the decision, using "objective" factors.

Judge Gibson, in his dissent in the first appeal, 620 F.2d at 662, urged that Title VII was never intended to require "uniform production standards" or to mandate "how businesses should produce their products. This requirement would result in government supervision of each and every stage of the production process." Petitioner thought that such a criterion for finding liability was foreclosed by *Furnco, supra*, 438 U.S. at 572, which held that "[c]ourts are generally less competent than employers to restructure business practices, and unless mandated to do so by Congress they should not attempt it."

The appellate decision was based in part, of course, on that Court's erroneous view of the law, but even under its own legal tests, this case was wrongly decided. The district court found that there was no evidence that Vaughn was verbally abused or harrassed on account of her race or for any other reason; she admittedly did not like the third or "graveyard" shift, and performed poorly there; her supervisor, Mr. Turnage, warned her on five separate occasions during her tenure on his shift that she was not performing satisfactorily and made contemporaneous notes of those conferences. Mr. Turnage tried to motivate her and offered her training opportunities, but he was unable to motivate her or improve her performance for more than a few days at a time. Turnage, in his four years as a supervisor, had disqualified only three employees, Vaughn and two white males; Turnage was apparently unaware of Vaughn's performance on Barzil's shift and limited his consideration solely to her observed performance under his supervision. The trial court found "no reason to disbelieve" any of this testimony, or the documentary evidence supporting it. Further, there was no evidence that similarly situated whites had been treated differently, or that blacks were disqualified more frequently than whites. None of the evidence credited by the court addressed the employment action in dispute.

On such a record, there was simply no evidence to support a finding that *Turnage's* decision—and his was the only decision then in dispute—was based even in part on unlawful racial considerations. As Judge Fagg wrote in dissent,

> "Based upon the record, I feel we are obligated to find that Vaughn disliked the late shift, she was underachieving on the sealex machine, and she was not motivated to improve upon an unsatisfactory performance notwithstanding the wasteful and costly consequences to her company.
>
> In my view, Vaughn failed to meet her burden of persuasion that a discriminatory reason was the basis for her disqualification and transfer to a lower paying job and the district court's ruling to the contrary is clearly erroneous."

Vaughn, supra, 702 F.2d at 140-41, (Fagg, J., dissenting). Petitioner is unable to state the case any more succinctly. Westinghouse has been forced to pay tens of thousands of dollars in attorney's fees, costs and backpay to an employee who did not like her job and would not perform it, and who, to this day, still declines to try the job again. Logic and fairness demand a reversal of this result.

CONCLUSION

The trial court and the Court of Appeals have had ample opportunity to correct this injustice. They have declined to do so. Petitioner earnestly prays that, for the foregoing reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Court of Appeals for the Eighth Circuit.

Respectfully submitted,

JAMES W. MOORE*
WALTER A. PAULSON, II
2000 First National Building
Little Rock, Arkansas 72201
(501) 376-2011

STUART I. SALTMAN
Chief Labor Counsel
Westinghouse Electric Corporation

Attorneys for Petitioners
**Counsel of Record*

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

NO. 82-1123

Christine Vaughn and Marian Gee,	*	
Appellees	*	
v.	*	Appeal from the United States District Court for the Eastern District of Arkansas
Westinghouse Electric Corp.,	*	
Appellant	*	

Submitted: December 14, 1982

Filed: March 11, 1983

Before ROSS and FAGG, Circuit Judges, and SCHATZ, District Judge.*

ROSS, Circuit Judge.

This case is before this Court for the second time on an appeal by the defendant Westinghouse from a decision by Judge Arnold, sitting by designation, again finding Westinghouse liable for a violation of Title VII of the Civil

*The Honorable Albert G. Schatz, United Staes District Judge for the District of Nebraska, sitting by designation.

Rights Act of 1964. In the initial proceeding before the trial court, appellee Vaughn prevailed on her claim that she was disqualified as a sealex machine operator because of her race. *Vaughn v. Westinghouse Electric Corp.*, 471 F.Supp. 281 (E.D. Ark. 1979). Westinghouse appealed to this court alleging that the district court misapplied the burden of proof, and that the factual findings were clearly erroneous. This court affirmed the judgment of the trial court. *Vaughn v. Westinghouse Electric Corp.*, 620 F.2d 655 (8th Cir. 1980). On March 9, 1981, the Supreme Court granted defendant's petition for certiorari, summarily vacated the judgment, and remanded the case to this court for further consideration in light of *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981). This court then remanded to the trial court with directions to reconsider in light of *Burdine*. On remand, the trial court held that it erred on the *Burdine* issue but held that, after reviewing the record as a whole, it reaffirmed its finding that Vaughn was disqualified from her job in substantial part because of her race. On appeal Westinghouse alleges that the district court erred in finding that its legitimate nondiscriminatory reason for disqualifying Vaughn was pretextual. We affirm.

Christine Vaughn, a black woman, was hired by Westinghouse on July 13, 1970, as a sealex machine operator, labor-grade-four, at $2.20 per hour. On November 16, 1970, she was transferred to a second shift position under the supervision of O.D. Brazil and was earning $2.54 per hour. On January 25, 1971, she was transferred to the third shift due to a reduction in force. She continued as a sealex operator under the supervision of C.T. Turnage and was earning the top wage rate of $2.69 per hour. On April 19, 1971, she was disqualified as a sealex operator by Turnage and placed on an open labor-grade-one job of bulb-loader earning $2.45 per hour.

At the time Vaughn was transferred from the second shift to the third shift, Brazil, as her supervisor, was

required to complete an employee evaluation form concerning Vaughn's job performance. At trial, however, *two* forms were found in Vaughn's personnel file. One form was dated January 20, 1971, and stated that the quality and quantity of production were poor, that he would not rehire her for that reason, and that she got along well with others including her supervisors. The second form was dated January 18, 1971, and stated that Vaughn had had previous satisfactory experience as a sealex machine operator under Brazil on the second shift. From these forms, the district court concluded that Vaughn's work under Brazil presented some problems, but not serious enough to label her performance unsatisfactory.

Under Turnage's supervision on the third shift, Vaughn was verbally warned on five occasions that she was having production problems. Turnage made notes of these verbal warnings which were introduced at trial. On April 19, 1971, Vaughn was disqualified from her job as sealex operator. Vaughn disputed that she had any prior warnings of this action, and testified that she felt she was disqualified under orders from the front office for unknown reasons.

The district court held that Vaughn had established a prima facie case of racial discrimination under the rationale of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The court then held that Westinghouse articulated a legitimate nondiscriminatory reason for Vaughn's disqualification: poor production. However, the court found that the proffered reason was pretextual after considering the record as a whole. In its finding of pretext, the district court focused on the following facts: almost all supervisors at Westinghouse are and have been white; most of the labor-grade-four sealex operators in 1971 were white; basically all labor-grade-one bulb-loaders were black; plaintiff Vaughn, according to Brazil, performed satisfactorily on the sealex machine before her transfer to third shift; and that Vaughn had progressively been given pay increases, until, several

months before her disqualification, she had reached the top rate of pay available for a sealex operator. The court then held that even though Vaughn had some production problems, it felt that her disqualification was motivated in substantial part by her race.

This is a close case and it may well be that the panel, if sitting as the trial judge, might have found that Westinghouse's proffered reason for plaintiff's disqualification was not pretextual. However, we may not substitute our views for that of the district court unless we are able to say that the findings of fact in this case are clearly erroneous as is required by FED. R. CIV. P. 52(a). The factual findings of the district court should not be overturned unless the reviewing court is left with the definite conviction that a mistake has been committed. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). We cannot say, after a review of the record, that we are left with a definite conviction that a mistake was committed in the district court's findings of fact. Accordingly, the district court's judgment that Vaughn was unlawfully disqualified from her job as a sealex operator is affirmed.

FAGG, Circuit Judge, dissenting.

I respectfully dissent. I agree with the majority that Vaughn established a prima facie case and that Westinghouse articulated a legitimate, nondiscriminatory reason for Vaughn's disqualification. However, I disagree that the evidence in the record demonstrates that Vaughn met her burden of proving by a preponderance of the evidence that Westinghouse's reason was a pretext for discrimination. *See Texas Department of Community Affairs v. Burdine, supra*, 450 U.S. at 252-53.

The following evidence supports the conclusion that Vaughn's disqualification was not the result of discrimination. The district court found that there was no evidence

that Vaughn was verbally abused or harassed on account of her race or for any other reason. At the time of her disqualification, Vaughn was working the graveyard shift, 11:00 p.m. to 7:00 a.m., under the supervision of Turnage. Vaughn testified that Turnage gave her assistance to help her become a better sealex operator. Near the end of March, Vaughn communicated her dislike of her job to Turnage and said she wanted to bid off. Turnage explained that she could not bid off because she had not been on the job a sufficient length of time and he encouraged her to put more effort into the job she presently held. Turnage was unable to motivate her, he believed she had no interest in the job of sealex machine operator, and the district court found no reason to disbelieve any of his testimony.

Additionally, there is undisputed evidence of Vaughn's poor production. Her burnt wires causing waste were documented by Turnage. As a sealex operator, Vaughn's production was important because a sealex operator paces the production output of a group of six other employees. Turnage warned Vaughn on five separate occasions from March 9, 1971, to April 15, 1971, about her production problems. He discussed with her the fact that her rate of burnt wires was much higher than that of the other sealex operators. Turnage testified that after the warnings Vaughn would have short periods of improvement but that there was no overall improvement.

Turnage disqualified Vaughn on April 19, 1971. At that time he told Vaughn, in the presence of the union shop steward, that her disqualification was due to her obvious dislike for her job, her high number of burnt wires, and her failure to improve her production to a satisfactory level after repeated talks and warnings. Turnage was a supervisor for Westinghouse for four years. During that entire time he disqualified or failed to qualify only three employees, Vaughn and two white males. The record contains no evidence that Turnage was aware of Brazil's prior reports or that he had conferred with Brazil about

Vaughn's work performance. Under the record the finding is inescapable that Turnage's disqualification decision was based on Vaughn's performance on the graveyard shift and was not influenced by Brazil's impression of Vaughn's ability.

The focus of this case is on the graveyard shift and the evidence is one-sided in favor of Westinghouse: Turnage was an objective supervisor; Turnage counted her burnt wires and told her to reduce her waste, but her performance did not improve; Vaughn did not complain that Turnage's production expectations were unreasonable; Vaughn had no complaints with Turnage's administration of the graveyard shift and she did not contend that his criticism of her work was laced with racial overtones; moreover, no proof was offered that a white employee with a work record comparable to Vaughn's was kept on the job. Although the district court noted that Westinghouse had not established production criteria; although Turnage was not asked specifically if Vaughn's race was a factor in his decision; although Vaughn may have been unhappy with the conduct of a supervisor on a different shift; and although Vaughn introduced general statistics; none of this evidence addresses the employment action in dispute. Based upon the record, I feel we are obliged to find that Vaughn disliked the late shift, she was underachieving on the sealex machine, and she was not motivated to improve upon an unsatisfactory performance notwithstanding the wasteful and costly consequences to her company.

In my view Vaughn failed to meet her burden of persuasion that a discriminatory reason was the basis for her disqualification and transfer to a lower paying job and the district court's ruling to the contrary is clearly erroneous. When this case made its initial appearance before the court Judge Floyd R. Gibson filed a dissenting opinion that is equally applicable to the case as it now pends before the court:

> These facts are devoid of any connotation whatsoever of racial discrimination. The only discrimination against Vaughn was because of her poor and sloppy work. The Civil Rights Act of 1964 is not thought to have been passed to preserve sinecures for people, regardless of their race, who do not want to perform reasonably satisfactory work. Vaughn's productivity record was the worst of any of the operators. The Act here is being utilized as a shield to protect and reward sub-standard performance.

Vaughn v. Westinghouse Electric Corp., supra, 620 F.2d at 662 (Gibson, J., dissenting).

I would reverse.

A true copy.

ATTEST:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

CHRISTINE VAUGHN, Plaintiff	)	
VS.	)	NO. LR-C-74-215
WESTINGHOUSE ELECTRIC CORPORATION. Defendant	)	

OPINION ON REMAND

ARNOLD, Circuit Judge, Sitting by Designation.

When this case was first before the Court, the defendant Westinghouse was found to have unlawfully disqualified the plaintiff Christine Vaughn from her job as a sealex operator at defendant's Little Rock light-bulb plant, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. *Vaughn v. Westinghouse Electric Corp.*, 471 F.Supp. 281 (E.D. Ark. 1979). In an unpublished [1] order this Court explained the rationale for its holding:

> Defendant simply failed to articulate a legitimate, nondiscriminatory reason for Ms. Vaughn's disqualification.

Vaughn v. Westinghouse Electric Corp., No. LR-C-74-215 (E.D. Ark., order filed May 23, 1979).

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1 The text of the relevant portion of the order may be found in *Vaughn v. Westinghouse Electric Corp.*, 620 F.2d 655, 659 (8th Cir. 1980), the opinion of the Court of Appeals affirming this Court's initial decision.

On defendant's appeal the judgment was affirmed. 620 F.2d 655 (8th Cir. 1980). The Court of Appeals, one judge dissenting, held (1) that this Court has not "misapplied the appropriate burden of proof standards," *id.* at 656, and (2) that this Court's findings of fact were not clearly erroneous, *id.* at 656, 660. Defendant then petitioned for review in the Supreme Court. On March 9, 1981, the Supreme Court granted defendant's petition for certiorari, summarily vacated the judgment of the Court of Appeals, and remanded the cause to that Court "for further consideration in light of *Texas Department of Community Affairs v. Burdine*," 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981), which had been decided five days earlier. *Westinghouse Electric Corp. v. Vaughn*, 450 U.S. 921, 101 S.Ct. 1504, 67 L.Ed.2d 808 (1981). The Court of Appeals in turn remanded the cause to this Court with directions to reconsider it in light of *Burdine*. *Vaughn v. Westinghouse Electric Corp.*, 646 F.2d 335 (8th Cir. 1981). Thereafter, this Court held an in-chambers conference with counsel. It was agreed that no new evidence was necessary, and that each side would brief two issues: (1) whether, in light of Burdine, this Court erred in its initial holding that defendant had failed to meet its second-stage burden of articulating a legitimate, non-discriminatory reason for disqualifying plaintiff from her job; and (2) whether, if defendant did in fact meet this second-stage burden of production, plaintiff should nevertheless recover because she has, on the whole case, met her burden of persuading the Court by a preponderance of the evidence that her disqualification was motivated at least in part by her race. Briefing was completed on July 21, 1981. I have now read the relevant portions of the transcript, and the case is ready for decision.

I.

The first of the two questions presented may be disposed of without elaborate discussion. *Burdine* holds that the defendant's burden, once plaintiff makes a prima facie case, is one of production only, not of persuasion.

Defendant need only introduce admissible evidence, legally sufficient (if believed) to justify a judgment in its favor, that the reasons for its personnel action were legitimate and nondiscriminatory. Although "the defendant's explanation of its legitimate reasons must be clear and reasonably specific," 101 S.Ct. at 1096, "[i]t is sufficient if the defendant's evidence raises a genuine issue of fact as to whether it discriminated against the plaintiff." *Id.* at 1094 (footnote omitted). Here, defendant introduced evidence, which was admitted without objection, that it disqualified plaintiff because she had too many burned wires. This asserted reason is legitimate and nondiscriminatory. It was error for this Court to require defendant to show by a preponderance of the evidence that it was in fact motivated by plaintiff's poor job performance. See 471 F.Supp. at 286, 289-90. [2] And although this Court thought at the time that the verbs "show," "prove," and "articulate" were roughly interchangeable, the Supreme Court has now unmistakably held otherwise. Plaintiff now concedes as much in her brief. The Court therefore now holds that defendant did articulate a legitimate, nondiscriminatory reason for disqualifying plaintiff as a sealex operator.

II.

Defendant argues, in an excellent brief, that plaintiff has failed to carry her burden of persuasion on the whole case. It is forcefully pointed out that plaintiff's problems with making production were well-documented; that Clint Turnage, her supervisor at the time of the disqualification, warned her several times that her performance would have to improve; and that the white woman who replaced her at the sealex machine was entitled to the job by virtue of

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2

Compare *Burdine v. Texas Department of Community Affairs*, 647 F.2d 518 (5th Cir. 1981) (on remand, judgment for defendant affirmed; trial court had found no discrimination).

seniority. In addition, defendant correctly states that there was virtually no direct evidence of unlawful motivation on the part of Mr. Turnage, and that no proof was offered to the effect that a white person with a work record comparable to Ms. Vaughn's was kept on the job. If the issue were narrowly confined to evidence bearing directly on the decision to disqualify the plaintiff, there is no question that defendant would prevail.

The Court believes itself obliged, however, to consider the whole record, including those portions of the evidence that may throw indirect light on defendant's conduct. The Court is not called upon to express a generalized judgment about Westinghouse's employment policies. This is only an individual action challenging a single employee's disqualification and transfer to a lesser-paying job. But circumstantial evidence of intent, as well as direct, is relevant and can be persuasive. Direct evidence of discrimination is rare. An individual personnel action can usually be properly judged only if it is placed in the broader context of defendant's actions over a substantial period of time.

This Court's prior opinion described this context in some detail. 471 F.Supp. at 283-86. There is no need to

repeat this discussion here. The findings previously made have been upheld by the Court of Appeals. [3] They are now reaffirmed by this Court. In addition, it is important to note that almost all of defendant's supervisors, including the two men under whom plaintiff worked as a sealex operator, are and have been white; that most of the labor-grade-four sealex operators in 1971, when plaintiff was disqualified, were white (T. 15); that "[b]asically all" the labor-grade-one bulb loaders (the lower-paying job to which plaintiff was demoted) were black (T. 17); that plaintiff, according to a memorandum dated January 18, 1971, performed satisfactorily on the sealex machine while working under O.D. Brazil, before her transfer to Mr. Turnage's shift; and that plaintiff had progressively been given pay increases, until, several months before her disqualification, she had reached the top rate of pay available for that work. The Court does not doubt that the burnt wires documented by defendant in fact existed, or that production problems were a genuine concern. It seems likely, in fact, that plaintiff's job performance did leave something to be desired, and that defendant was in part legitimately motivated in disqualifying her.

3

This Court's prior opinion did not reach the issue of pretext, and neither did the Court of Appeals. But that Court did make the following significant comment:

> It should be noted that, if required, much of the evidence used by the district court in finding a prima facie case might go to whether the employer's articulated reason is pretextual. *McDonnell Douglas* states the statistical evidence submitted by plaintiffs is helpful in showing pretext. So would testimony of Vaughn and others relating to individual instances of discrimination. Thus the district court in the present case alternatively could have found the reasons articulated by Westinghouse to be legitimate and nondiscriminatory, but based on the statistical evidence, testimony, and lack of objective production standards, the reasons to be a pretext for discrimination.

620 F.2d at 660 n.4.

The question in the case, however, is whether race played *any* substantial part in defendant's decision-making. To decide what motivated someone ten years ago is not an easy task. But on balance the Court is persuaded that plaintiff's race was more likely than not one of the factors that contributed substantially to defendant's decision. If defendant had set a numerical standard of production, communicated it to its employees, and enforced it uniformly, the result might well be otherwise. It did not do so. [4] Turnage did act objectively in the sense of counting and documenting the number of plaintiff's burnt wires, but he never communicated to her any fixed number that she could not exceed (T. 655), nor did he testify as to what that number might have been. [5] The Court finds that plaintiff was disqualified in part because of her race. Defendant's conduct was therefore a violation of Title VII.

III.

Before final judgment can be entered, the Court must decide what elements or relief are appropriate. When this case was before the Court the first time, plaintiff was

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4

Defendant argues that the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 798, 803, 93 S.Ct. 1817, 1822, 1814, 36 L.Ed.2d 668 (1973), generally disapproved the distinction between objective and subjective criteria. I do not so read the case. Many employment decisions must be at least partly subjective, and the absence of objective criteria cannot be legally dispositive. But it is one factor to be considered, especially in a production-line situation where employee performance not only can be, but is, quantitatively measured. See *Taylor v. Teletype Corp.*, 648 F.2d 1129, 1135 (8th Cir. 1981) (trial court properly "took into consideration the subjective decision making of the Company"), pet'n for cert. filed 50 U.S.L. Week 3176 (U.S. Sept. 14, 1981) (No. 81-512).

5

I have read and re-read Mr. Turnage's testimony. (T. 648-70). There is no reason to disbelieve any of it. But at no time did he testify that Ms. Vaughn's race was not a factor in his decision. The omission is unique in Title VII litigation in which I have been involved, so far as I can now recall.

awarded $1,696.25, representing back pay up to and including May 30, 1979. 471 F.Supp. at 292. This figure must be brought up to date. In addition, the Court at that time declined to order defendant to reinstate plaintiff as a sealex operator immediately, but rather ordered it to allow her to bid on the next available position. It seems that the same measure of relief remains appropriate. In one respect, a change should be made in the form of order previously entered. Paragraph 5 of the judgment enjoined defendant generally from any racial discrimination in employment. The injunction was not limited to disqualifications, or to any particular plant or group of employees. The Court now believes that this order was too broad. This case began as a class action with three named plaintiffs. Class certification was denied, and two of the plaintiffs' complaints were dismissed in their entirety. The third plaintiff, Ms. Vaughn, has prevailed on only one claim of discrimination out of five suggested. See 471 F.Supp. at 288. This claim involved an isolated instance of discrimination that took place ten years ago. In a situation somewhat similar, but involving a defendant which had been found to have discriminated in four different instances, instead of only one, the Court of Appeals indicated "serious doubt as to the appropriateness of this kind of relief." *Taylor v. Teletype Corp., supra*, 648 F.2d at 1136, *vacating on this point* 478 F.Supp. 1227, 1228 (E.D. Ark. 1979). This Court is therefore not disposed to award permanent, broad-ranging injunctive relief against Westinghouse.

Because plaintiff has prevailed on one of her claims, she is entitled, in the Court's discretion, to an award of attorneys' fees. [6] There is no reason not to make such an award. Its amount will of course need to be determined.

6

While this case was pending on petition for certiorari, plaintiff filed a motion for a fee award. I excused myself, because the motion depended in part on an issue of timeliness, which in turn involved the credibility of one of counsel for plaintiff versus that of one of my law clerks. When certiorari was granted and the judgment in favor of plaintiff vacated, this particular question became moot, and there was no longer any reason for my disqualifiction.

Plaintiff is directed to file, on or before October 15, 1981, a memorandum, supported by affidavit, setting forth her position as to the appropriate amount of back pay and attorneys' fees. Defendant may have until October 30, 1981, to reply. Entry of judgment will be withheld until all questions of relief are resolved.

APPENDIX C

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1982

No. 82-1123-EA

Christine Vaughn, et al,
Appellees,

vs.

Westinghouse Electric Corp.,

Appellant.

Appeal from the United States District Court for the Eastern District of Arkansas.

This appeal from the United States District Court was submitted on the record of the said District Court, briefs of the parties, and was argued by counsel.

After consideration, it is ordered and adjudged that the judgment of the said District Court in this cause be, and the same is hereby, affirmed in accordance with the opinion of this Court.

March 11, 1983

Total costs of Appellees
for briefs for recovery from
Appellant: $57.00

(PLEASE PAY COSTS DIRECTLY TO PARTIES INVOLVED)

A true copy:

ATTEST:

/s/ Robert D. St. Vrain
CLERK, U.S. COURT OF APPEALS, 8TH CIRCUIT
4/5/83

APPENDIX D

WHOLLY AND PARTIALLY OWNED SUBSIDIARIES OF WESTINGHOUSE ELECTRIC CORPORATION

Name	Incorporated In	% of Ownership
Adams Elevator Equipment Company	Delaware	100
Ampgard Products, Inc.	Delaware	100
Ascensores Westinghouse, Inc.	Delaware	100
Ateliers de Constructions Electriques de Charleroi, S.A. (ACEC)	Belgium	17.4
Bolting Services, Inc.	California	100
Breakers Incorporated	Delaware	100
Bryloc, Inc.	Delaware	100
CAX, Inc.	Delaware	100
Cebor Construction Corporation	Delaware	100
Circle W Transportation, Inc.	Delaware	100
Commercial Dorve, S.A.	Spain	100
Compagnie des Dispositifs Semi-conducteurs Westinghouse (CDSW)	France	81.3
Componentes Electricos de Lamparas S.A. de C.V.	Mexico	100
Componentes Motrices, Inc.	Delaware	100
Computer and Instrumentation de Puerto Rico, Inc.	Delaware	100

Consolidated Elevator Co., Inc.	District of Columbia	100
Consolidated Elevator Co., Inc.	Virginia	100
Electric Arc, Inc.	Delaware	100
Electrical Specialty Products Co.	Alabama	100
Eletrocontroles Villares, Ltda.	Brazil	30.0
Eletromar Industria Eletrica Brasileira, S.A.	Brazil	53.0
Eletromar Nordeste, S.A.	Brazil	90.4
Elevator Products Corp.	New Jersey	100
Elliorr Valve Repair Company, Inc.	Texas	100
Energy Systems Installation, Inc.	Delaware	100
Ercole Marelli & Company, S.p.A.	Italy	1.9
Fabricante de Productos Industriales, S.A. de C.V.	Mexico	100
Fortin Industries, Inc.	Delaware	100
Fusibles Westinghouse de Puerto Rico, Inc.	Delaware	100
Galileo Argentina C.I.S.A.	Argentina	40.
Galileo Uruguaya, S.A.	Uruguay	91.
Gangloff Corporation	Delaware	100
Gateway Fleet Company	Pennsylvania	100
Grundstuecks-Verwaltungsgesellschaft Genfer Strasse mbH	West Germany	100

Half Moon Bay Properties, Inc.	Delaware	100
Half Moon Bay Construction, Inc.	California	100
Ocean Colony Realty, Inc.	California	100
Half Moon Bay Realty, Inc.	California	100
Resources Design, Inc.	California	100
Hittman Nuclear & Development Corporation	Delaware	100
Hittman Transport Services, Inc.	Delaware	100
Hub Electric Company, Inc.	Illinois	100
Hundt & Weber Schaltgerate GmbH	West Germany	100
ICO de Puerto Rico, Inc.	Delaware	100
IVI Manufacturing, Inc.	Delaware	100
Ideal School Supply Company	Illinois	100
Educational Products, Inc.	Delaware	100
Living & Learning (Cambridge), Ltd.	United Kingdom	25.
Industria IEM, S.A. de C.V.	Mexico	9.0
International Filter, Inc.	Delaware	100
Interruptores, Inc.	Delaware	100
Iran-Westinghouse Programs Service Company	Delaware	100
Irwin Industries, Inc.	California	100
JJMR	Delaware	100
LWW, Inc.	Delaware	100
Lamparas Electricas, Inc.	Delaware	100
Longines-Wittnauer, Inc.	Delaware	100
Credit Services, Inc.	New York	100
Wittanuer et Cie., S.A.	Switzerland	100

Luxaire, Inc.	Delaware	100
Moncrief Furnace and Air Conditioning Company	Ohio	100
MMCK Corporation	Delaware	100
Materiales Plasticos, Inc.	Delaware	100
Mecanica Pesada, S.A.	Brazil	2.1
Metal Working Systems, Inc.	Delaware	100
Mex Control S.A. de C.V.	Mexico	49.0
Miles Grant Realty Corporation	Florida	100
Miles Grant Water and Sewer Company	Florida	100
Millar Elevator Industries, Inc.	Delaware	100
Minexde Westinghouse, Inc.	Delaware	100
Mitsubishi Nuclear Fuel Co., Ltd.	Japan	34.0
Moorwest, Inc.	Delaware	100
Motores Electricos de Juarez, S.A. de C.V.	Mexico	999.9
Ottermill Limited	United Kingdom	100
Ottermill Switchgear Limited	United Kingdom	100
Westinghouse Electric-MK Limited	United Kingdom	51.0
Ottermill Products Limited	United Kingdom	51.0
Ottermill Switchgear (S.A. (Pty) Ltd.	South Africa	100
Portmetco, Inc.	Delaware	100
Productos Circuitos de Puerto Rico, Inc.	Delaware	100
Productos Electro Mecanicos, Inc.	Delaware	100
Productos Motrices, Inc.	Delaware	100
Productos Motrices, Inc.	Delaware	100

Productos Westinghouse, Inc.	Delaware	100
Prorelco de Puerto Rico, Inc.	Delaware	100
Prowest, Inc.	Delaware	100
Schneider S.A.	France	.63
Semiconductores Westinghouse, Inc.	Delaware	100
7-Up Bottling Co., Inc.	Puerto Rico	100
Silectra S.A. de C.V.	Mexico	40.0
Superior-Sterling Company	West Virginia	100
TCOM Corporation	Deleware	100
TCOM Export Corporation	Delaware	100
Thermo King Caribbean, Inc.	Delaware	100
Thermo King Corporation	Delaware	100
Thermo King of Southern California, Inc.	Delaware	100
Thermo King de Puerto Rico, Inc.	Delaware	100
Transformadores, Inc.	Delaware	100
Treasure Lake of North Carolina, Inc.	North Carolina	100
Treasure Lake of Pennsylvania, Inc.	Pennsylvania	100
Treasure Lake Real Estate, Inc.	Pennsylvania	100
Tubos Electronicos Westinghouse, Inc.	Delaware	100
Turtle Creek and Allegheny River Railroad Company (The)	Pennsylvania	100
Tyree Industries Limited	Australia	68.8
Endurance Electric Pty. Limited	Australia	100
Moorebank Properties Pty. Limited	Australia	100
Tranco Electronics Pty. Limited	Australia	100
Tyree Electrical Co. Pty. Limited	Australia	100

Tyree Industries (N.Z.) Pty. Limited	New Zealand	100
Tyree Industries (Qld.) Pty. Limited	Australia	100
Tyree Industries (S.A.) Pty. Limited	Australia	100
Tyree Industries (Vic.) Pty. Limited	Australia	100
W.T. Engineering Pty. Limited	Australia	100
Westralian Transformers Pty. Limited	Australia	62.5
Westrans (W.A.) Pty. Limited	Australia	100
Westralian Transformers Pty. Limited	Australia	37.5
Tyree-Power Construction Limited	New Zealand	49.9
Tyree-Power Construction (Auckland) Limited	New Zealand	100
Unimation, Inc.	Delaware	100
United Elevator Corporation	California	100
Vectrol, Inc.	Maryland	100
Motor Control Corporation	California	100
Vektron S.A.	Mexico	24.5
West Valley Nuclear Service Company, Inc.	Delaware	100
Westinghouse Beverage Group, Inc.	Delaware	100
Westinghouse Broadcasting and Cable, Inc.	Indiana	100
CATV Enterprises, Inc.	New York	100
Group W Cable, Inc.	New York	100
ACTIVE SUBSIDIARIES – 11/8/82		
Cable TV General, Inc.	Delaware	80.0
Cablevision Training Centers, Inc.	Missouri	100
El Paso Cablevision, Inc.	Texas	74.67
Filmation Associates	Nevada	80
Focus Cable of Oakland, Inc.	California	80
Grosse Point Cable, Inc.	Michigan	25
Group W Cable of Burnsville/ Egan, Inc.	Minnesota	
Group W Cable of Grapevine, Inc.	Texas	100

Group W Cable of Lewisville, Inc.	Texas	100
Group W Cable of Lorain County, Inc.	Ohio	80
Group W Cable of North Central Chicago, Inc.	Illinois	98
Group W Cable of North Central Suburbs, Inc.	Minnesota	100
Group W Cable of Northern Dakota County, Inc.	Minnesota	100
Group W Cable of North Suburbs, Inc.	Minnesota	100
Group W Cable of North West Chicago, Inc.	Illinois	98
Group W Cable of Quad Cities, Inc.	Minnesota	100
Group W Cable of Ramsey, Washington, Inc.	Minnesota	100
Group W Cable of St. Paul, Inc.	Minnesota	80
Kaiser-Teleprompter of Hawaii, Inc.	Nevada	50
Piedmont Cablevision, Inc.	California	80
Shermely Music, Inc.	California	100
Southwest Video Corp. (d/b/a Group W Cable)	Texas	97.3
Spacecast, Inc.	Delaware	100
T & H Associates	Delaware	100
Telcom Cablevision, Inc.	Delaware	80
Teleprompter Cable Services, Inc.	California	100
Teleprompter Communications, Inc.	New York	100
Teleprompter of Clarksburg, Inc. (d/b/a Group W Cable)	West Virginia	100
Teleprompter of Columbia Heights/ Hilltip, Inc. (d/b/a Group W Cable)	Minnesota	80
Teleprompter of East San Fernando Valley, Inc.	California	100
Teleprompter of Fairmont, Inc. (d/b/ Group W Cable)	West Virginia	100
Teleprompter of Richardson, Inc.	Texas	100
Teleprompter of St. Bernard, Inc. (d/b/a Group W Cable)	Louisiana	80
Teleprompter of Worcester, Inc.	Massachusetts	80
Wired Music, Inc.	Illinois	100

INACTIVE SUBSIDIARIES TO BE DISSOLVED – 11/8/82

All Towns Cable TV, Inc.	New York	100
Community Cablevision Corporation	New Jersey	100

Community Cablevision Corporation	Pennsylvania	100
Community Electronics Systems, Inc.	Delaware	100
Cornwall Co-Ax, Inc. SUB of Newburgh	New York	100
Garden State TV Cable Corp. of Northfield	New Jersey	100
Group Communications, Inc.	New York	100
Highline Community Antenna Service	Montana	100
Hometown TV, Inc., SUB of Newburgh	New York	100
Lake County Cable TV, Inc.	Indiana	100
North Suffolk CATV Systems, Inc.	New York	100
Pinellas CATV Corporation	Delaware	100
PS West	California	100
Suburban Cable Television, Inc.	California	100
SVC Systems, Inc.	Texas	100
Teleprompter Cable Communications Corp	Connecticut	100
Teleprompter Hillsborough Cablevision Corp	Delaware	100
Teleprompter International Corporation	New York	100
Teleprompter Island Cable TV Corporation	New York	100
Teleprompter Massachusetts CATV Corporation	Delaware	100
Teleprompter Multiservices Corporation	Delaware	100
Teleprompter New Jersey Cable Network, Inc.	New Jersey	100
Teleprompter of Berea, Inc.	Ohio	100
Teleprompter of Beverly, Inc.	Massachusetts	100
Teleprompter of Boston, Inc.	Massachusetts	100
Teleprompter of Brockton, Inc.	Massachusetts	100
Teleprompter of Brookline, Inc.	Massachusetts	100
Teleprompter of Brooklyn, Inc.	Delaware	100
Teleprompter of Burlingame, Inc.	California	100
Teleprompter of Campbell County, Inc.	Kentucky	100
Teleprompter of Caribou, Inc.	Maine	100
Teleprompter of Chicago Heights, Inc.	Illinois	100
Teleprompter of Cicero, Inc.	Illinois	100
Teleprompter of Cincinnati, Inc.	Ohio	100
Teleprompter of Coquille, Inc.	Delaware	100
Teleprompter of the Colony, Inc.	Texas	100

Teleprompter of Danbury, Inc.	Connecticut	100
Teleprompter of Evanston, Inc.	Illinois	100
Teleprompter of Frendale, Inc.	Michigan	100
Teleprompter of Gardena, Inc.	California	100
Teleprompter of Garden City, Inc.	Michigan	100
Teleprompter of Glendale, Inc.	Arizona	100
Teleprompter of Glen Ellyn, Inc.	Illinois	100
Teleprompter of Great Falls, Inc.	Montana	100
Teleprompter of Harrison, Inc.	New York	100
Teleprompter of Holly Hill, Inc.	Florida	100
Teleprompter of Hudson, Inc.	Massachusetts	100
Teleprompter of Inkster, Inc.	Michigan	100
Teleprompter of La Crosse, Inc.	Wisconsin	100
Teleprompter of Lakeland, Inc.	Florida	100
Teleprompter of Manatee County, Inc.	Florida	100
Teleprompter of Marlborough, Inc.	Massachusetts	100
Teleprompter of Middleburg Heights, Inc.	Ohio	100
Teleprompter of Middletown, Inc.	Connecticut	100
Teleprompter of Millbury, Inc.	Massachusetts	100
Teleprompter of Milpitas, Inc.	California	100
Teleprompter of Missouri, Ind.	Delaware	100
Teleprompter of Mountain View, Inc.	Califormia	100
Teleprompter of Mount Lake Terrace, Inc.	Deleware	100
Teleprompter of Natick, Inc.	Massachusetts	100
Teleprompter of Newton, Inc.	Massachusetts	100
Teleprompter of New Orleans, Inc.	Lousianan	100
Teleprompter of Newport, Inc.	Kentucky	100
Teleprompter of North Olmsted, Inc.	Ohio	100
Teleprompter of Northwest Hennepin County, Inc.	Minnesota	100
Teleprompter of Oakland County, Inc.	Michigan	100
Teleprompter of Oregon, Inc.	Oregon	100
Teleprompter of Oxford, Inc.	Massachusetts	100
Teleprompter of Peabody, Inc.	Massachusetts	100
Teleprompter of Philadelphia, Inc.	Delaware	100
Teleprompter of Pittsburgh, Inc.	Delaware	100
Teleprompter of Portland, Inc.	Oregon	100
Teleprompter of Portsmouth, Inc.	Ohio	100
Teleprompter of Putnam County, Inc.	New York	100
Teleprompter of Queens, Inc.	New York	100
Teleprompter of Quincy, Inc.	Massachusetts	100
Teleprompter of Santa Ana, Inc.	California	100
Teleprompter of Scottsdale, Inc.	Arizona	100

Teleprompter of Sheboygan, Inc.	Wisconsin	100
Teleprompter of Southfield, Inc.	Michigan	100
Teleprompter of Southwest Hennepin County, Inc.	Minnesota	100
Teleprompter of Springfield, Inc.	Massachusetts	100
Teleprompter of Taunton, Inc.	Massachusetts	100
Teleprompter of Taylor, Inc.	Michigan	100
Teleprompter of Torrence, Inc.	California	100
Teleprompter of Tucson, Inc.	Arizona	100
Teleprompter of Vancouver, Inc.	Washington	100
Teleprompter of Wakefield, Inc.	Massachusetts	100
Teleprompter of Watertown, Inc.	New York	100
Teleprompter of Westchester, Inc.	New York	100
Teleprompter of Weymouth, Inc.	Massachusetts	100
Teleprompter Pay Television Corporation	New York	100
Theta East, Inc.	California	100
Theta West, Inc.	California	100

INACTIVE SUBSIDIARIES WITH MINORITY STOCKHOLDERS

Bayou Cablevision Company	Texas	80
Bridgeport Community Antenna TV Co.	Connecticut	95
Saw Mill River Cablevision, Inc.	New York	85
Teleprompter of Avon Lake, Inc.	Ohio	80
Teleprompter of Denver, Inc.	Colorado	80
Teleprompter of Kentucky, Inc.	Kentucky	80
Teleprompter of Milwaukee, Inc.	Wisconsin	80
Teleprompter of Sacramento, Inc.	California	80
Teleprompter of St. Paul, Inc.	Minnesota	80
Teleprompter of Sheffield Lake	Ohio	80

Group W Cable Productions, Inc.	Delaware	100
Home Theater Network, Inc.	Maine	100
Micro-Relay, Inc.	Maryland	100
PM Magazine Program Service, Inc.	Delaware	100
Westinghouse Broadcasting and Cable, Inc. (Cal.)	Delaware	100
Westinghouse Broadcasting and Cable, Inc. (Mass.)	Delaware	100
Westinghouse Broadcasting and Cable, Inc. (Colorado)	Colorado	100
W-F Productions, Inc.	Delaware	100

Westinghouse Canada Inc.	Canada	95.2
B.F. Sturtevant Canada Inc.	Canada	100

Electrics (1978) Inc.	Canada	100
Wescan Europe Limited	Ireland	100
Westinghouse Combustion Turbine Services, Inc.	Delaware	100
Westinghouse Communication Services, Inc.	Delaware	100
Westinghouse Communities, Inc.	Delaware	100
Coral Ridge Properties, Inc.	Delaware	100
Coral Highlands Association, Inc.	Florida	100
Coral Ridge Realty Corporation	Florida	100
Coral Ridge Realty Sales, Inc.	Florida	100
Coral Springs, Realty, Inc.	Florida	100
Florida National Properties, Inc.	Florida	100
Highland General Corporation	Forida	100
National Association Management, Inc.	Florida	100
New Community Development Group Corporation	Florida	100
Ocean Mile Association, Inc.	Florida	100
Realty Management Corporation	Florida	100
Royal Continental Hotels Corporation	Florida	100
Westinghouse Communities of Naples, Inc.	Florida	100
The Club at Pelican Bay	Florida	100
Pelican Bay Beach Club, Inc.	Florida	100
Pelican Bay Development, Inc.	Florida	100
Pelican Bay Properties, Inc.	Florida	100
Pelican Bay Racquet Club, Inc.	Florida	100
Pelican Bay Realty, Inc	Florida	100
Westinghouse Gateway Communities, Inc.	Florida	100
Westinghouse Construction International, Inc.	Delaware	100
Westinghouse Controls, Inc.	Delaware	100
Westinghouse Corporation	Pennsylvania	100
Westinghouse Credit Corporation	Delaware	100
First Hotel Investment Corporation	Delaware	100
First Tanker Leasing Corporation	Delaware	100
Penn Insurance Agency, Inc.	California	100
Westinghouse Leasing Corporation	Delaware	100

Westinghouse de Venezuela, S.A. (VENWESA)	Venezuela	100
Ascensores Westinghouse, S.A. (AWESA)	Venezuela	100
Productos Electricos Westinghouse, S.A. (PEWESA)	Venezuela	100
Servicios Industriales Westinghouse, C.A. (SERWESTCA)	Venezuela	100
Transformadores de Distribucion Trade, S.A. (TRADESA)	Venezuela	40.0
Tubos Westinghouse C.A. (TUWESTCA)	Venezuela	100
Westinghouse Electro Metalurgicas C.A. (WEMCA)	Venezuela	78.8
Luz-A-Tec Sistemas Integrados C.A.	Venezuela	100
Proyectos Westinghouse C.A. (PROWECA)	Venezuela	100
Industrias Electronicas, S.A. (INDELEC)	Venezuela	20.0
Westinghouse Defense International Limited	Australia	100
Westinghouse Defense International Marketing Company	Delaware	100
Westinghouse do Brasil S.A. (WEBSA)	Brazil	100
CMW Sistemas, Ltda. (CMWS)	Brazil	49.0
CMW Equipamentos, Ltda. (CMWE)	Brazil	49.0
Westinghouse do Nordeste S.A.	Brazil	100
Westinghouse Electric S.A. (WELSA)	Switzerland	100
Westinghouse Controlmatic GmbH	West Germany	100
Sestinghouse Electric GmbH (WELGES)	West Germany	100
Westinghouse Electric (Asia-Pacific) Holdings, Ltd. (WEAPHL)	Singapore	100
Westinghouse Electric (Singapore) Ltd.	Singapore	100
Industry Services Company of Saudi Arabia, Ltd. (ISCOSA)	Saudi Arabia	75.0
Galileo Argentina, C.I.S.A.	Argentina	17.0
Galileo Uruguaya, S.A.	Uruguay	91.7
Westinghouse Monitor A.B.	Sweden	100

Sterwech, B.V.	Netherlands	100
Verwarmings - en Technische Installatie Maatschappij B.V.	Netherlands	100
Westinghouse Electrotechniek en Instrumentatie B.V.	Netherlands	100
Controle et Applications	Netherlands	100
Thermo King do Brasil Ltda.	Brazil	100
Westinghouse, S.A. (WESA)	Spain	66.7
Westinghouse Proyectos Electricos, S.A. (WEPESA)	Spain	30.3
Westinghouse Asia Controls Corp.	Philippines	79.0
Westinghouse Electrique France, S.A.	France	100
Westinghouse Electric GmbH S.A.R.L. (WEG)	Switzerland	100
Ercole Marelli & Company, S.p.A.	Italy	4.0
Westinghouse Irish Holdings Limited	Ireland	100
CDSW Ireland Limited	Ireland	83.3
Westinghouse Electric Sales and Services Limited	Ireland	100
Westinghouse Electric Ireland Limited	Ireland	100
Westinghouse Electric Manufacturing Company Limited	Ireland	100
Westinghouse Electric, S.p.A. (WESPA)	Italy	100
Westinghouse Thermo King, GmbH	Switzerland	100
Westinghouse Trading Company Ltd.	Switzerland	100
Westinghouse Electric Supply Company of Saudi Arabia (WESCOSA)	Saudi Arabia	60.0
Westinghouse International Services, S.A. (WISSA)	Belgium	100
IEM S.A.	Mexico	23.7
Mex Control, S.A. de C.V.	Mexico	51.0
Silectra, S.A. de C.V.	Mexico	60.0
Industria IEM, S.A. de C.V.	Mexico	91.0
Wexico Systems and Services, Ltd.	Saudi Arabia	40.0
Westinghouse Electric (Japan) K.K.	Japan	100
China Industry Services Co., Ltd	Taiwan	75.0
Transformadores TPL S.A.	Colombia	42.3
Westinghouse Saudi Arabia Ltd. (WSAL)	Saudia Arabia	90.0
Westinghouse Electric (China) S.A., Zug (WECSA)	Switzerland	100
Metzenauer & Jung BmgH	West Germany	95.0

Norddeutsche Elektrotechnische Werke Metzenauer & Jung GmbH	West Germany	100
Metzenauer & Jung BV	Netherlands	100
Metzenauer & Jung Ltd.	United Kingdom	100
Electro - Fanal S.A.	Brazil	65.0
Westinghouse Electric Australia Holdings Limited	Australia	100
Cemac Westinghouse Pty. Ltd.	Australia	50.0
Westinghouse Electric Australasia Limited (WEAL)	Australia	100
Standard-Waygood of S.A. Limited	Australia	100
Westinghouse Electric Company, S.A. (WECOSA)	Delaware	100
Westinghouse do Brasil Servicos Ltda. (WEBRA)	Brazil	100
Westinghouse Electrid Europe S.A. (WEESA)	Belgium	100
Westinghouse Electric Export Corporation	Delaware	100
Westinghouse Electric Research and Engineering for Atomic Systems, Inc.	Delaware	100
Westinghouse Electrique Europe, S.A.	France	100
Westinghouse Hanford Company	Delaware	100
Westinghouse Industry Products International Company, Inc.	Delaware	100
Westinghouse Industry Services International Company, Inc. (WISICO)	Delaware	100
Westinghouse Industry Services Asia Private Limited	Singapore	100
Westinghouse Saudi Arabia Ltd. (WSAL)	Saudi Arabia	10.
Westinghouse International Atomic Power Co. S.A. (WIAPCO)	Switzerland	100

Westinghouse International Power Systems Company, Inc. (WIPSCO)	Delaware	100
Westinghouse Sistemas Electricos Ltda. (WSEL)	Brazil	100
Westinghouse International Projects Company	Delaware	100
Westinghouse International Service Company, Limited	Delaware	100
Westinghouse International Support Services, Inc.	Delaware	100
Westinghouse International Technology Corporation	Delaware	100
Westinghouse (Jamaica) Ltd.	Jamaica	51.
Westinghouse Learning Corporation	Delaware	100
Linguaphone Institute, Inc.	Delaware	100
Linguaphone Institute (Canada) Ltd.	Canada	100
Linguaphone Institute, Ltd.	United Kingdom	100
Copperfield Cases Limited	United Kingdom	100
Interlang Limited	United Kingdom	100
International Catalogues, Ltd.	United Kingdom	100
International Catalogues (Hong Kong) Ltd.	United Kingdom	100
International Gramaphone Co. Ltd.	United Kingdom	100
Language Tuition Centre, Ltd.	United Kingdom	100
Linguaphone Institute (Japan) Ltd.	Hong Kong	100
Linguaphone Sprachkurse GmbH	West Germany	100
L.T.C. Translation Ltd.	United Kingdom	100
Recordiogram Ltd.	United Kingdom	100
Schwartz Language Tuition Centre, Ltd.	United Kingdom	100
Sonodisc Ltd.	United Kingdom	100
Westinghouse Management Services, Inc.	Delaware	100
Westinghouse Management Systems, S.A.	France	100
Westinghouse (New Zealand) Limited	New Zealand	100
Westinghouse Nuclear International, Inc.	Delaware	100
Westinghouse Nuclear Espanola, Inc.	Delaware	100

Westinghouse Nuclear Japan, Inc.	Delaware	100
Westinghouse Overseas Service Corporation	Delaware	100
Westinghouse Pension Investments Corporation	Delaware	100
Westinghouse Pipeline Company	Delaware	100
Westinghouse Proyectos Electricos, S.A. (WEPESA)	Spain	40.
Westinghouse, S.A.	Spain	11.
Westinghouse Scandinavia A.B. (WESCAN)	Sweden	100
Westinghouse Sistemas Industriais Ltda. (WSIL)	Brazil	100
Westinghouse-Sturtevant de Puerto Rico, Inc.	Delaware	100
Westinghouse Technical Services Corporation	Delaware	100
Westinghouse Thermo King, S.A.	Belgium	100
Westinghouse Transport Leasing Corporation	Delaware	100
Westinghouse World Investment Corporation	Delaware	100
Ateliers de Constructions Electriques de Charleroi S.A. (ACEC)	Belgium	30.
Galileo Argentina, C.I.S.A.	Argentina	34.
Galileo Uruguaya, S.A.	Uruguay	91.
IEM S.A.	Mexico	19.
Mex Control, S.A. de C.V.	Mexico	51.
Silectra, S.A. de C.V.	Mexico	60.
Industria IEM, S.A. de C.V.	Mexico	91.
Wyoming Mineral Corporation	Delaware	100

ACRONYMS

ACEC	– Ateliers de Constructions Electriques de Charleroi S.A.
AWESA	– Ascensores Westinghouse, S.A.
CDSW	– Compagnie des Dispositifs Semiconducteurs Westinghouse
CMWE	– CMW Equipamentos, Ltda.
CMWS	– CMW Sistemas, Ltda.
INDELEC	– Industrias Electronicas, S.A.
ISCOSA	– Industry Services Company of Saudi Arabia, Ltd.
PEWESA	– Productos Electricos Westinghouse, S.A.
PROWECA	– Proyectos Westinghouse C.A.
SERWESTCA	– Servicios Industriales Westinghouse, C.A.
TRADESA	– Transformadores de Distribucion Trade, S.A.
TUWESTCA	– Tubos Westinghouse C.A.
VENWESA	– Westinghouse de Venezuela, S.A.
WBC	– Westinghouse Broadcasting and Cable, Inc.
WCC	– Westinghouse Credit Corporation
WEAL	– Westinghouse Electric Australasia Limited
WEBRA	– Westinghouse do Brasil Servicos Ltda.
WEBSA	– Westinghouse do Brasil S.A.
WECOSA	– Westinghouse Electric Company, S.A.
WEESA	– Westinghouse Electric Europe S.A.
WELGES	– Westinghouse Electric GmbH
WELSA	– Westinghouse Electric S.A.
WEMCA	– Westinghouse Electro Metalurgicas C.A.
WEPESA	– Westinghouse Proyectos Electricos, S.A.
WESA	– Westinghouse, S.A.
WESCOSA	– Westinghouse Electric Supply Company of Saudi Arabia
WESPA	– Westinghouse Electric, S.p.A.
WIAPCO	– Westinghouse International Atomic Power Co. S.A.
WIPCO	– Westinghouse International Projects Company
WISPCO	– Westinghouse International Power Systems Company, Inc.
WISC	– Westinghouse International Service Company, Limited
WISICO	– Westinghouse Industry Services International Company, Inc.
WISSA	– Westinghouse International Services, S.A.
WITCORP	– Westinghouse International Technology Corporation
WNI	– Westinghouse Nuclear International, Inc.
WOSCO	– Westinghouse Overseas Service Corporation

WSAL	– Westinghouse Saudi Arabia Ltd.
WSEL	– Westinghouse Sistemas Electricos Ltda.
WSIL	– Westinghouse Sistemas Industriais Ltda.